

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE: PVO 18 U.S.C. § 1349 (Rojas)

MISC. NO. \_\_\_\_\_

**UNDER SEAL**

\_\_\_\_\_/

**EX PARTE APPLICATION FOR SUSPENSION OF**  
**RUNNING OF STATUTE OF LIMITATIONS**

The United States of America, by and through its undersigned attorneys, applies to this court pursuant to Title 18, United States Code, Section § 3292, to suspend the running of the statute of limitations for offenses arising out of the grand jury's investigation of **ARNOLD ROJAS RIVAS** and **FRANK ROJAS RIVAS**. In support of this application, the government represents the following:

1. A grand jury duly impaneled in this district has been conducting an investigation of **ARNOLD ROJAS RIVAS** and **FRANK ROJAS RIVAS** for the following possible criminal offenses: conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349, wire fraud, in violation of Title 18, United States Code, Section 1343, and money laundering and conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956. No indictment has been returned.

2. Title 18, United States Code, Section 3292(a)(1), provides as follows:

Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

3. Section 3292(d) defines an "official request" to include "a request under a treaty or convention" or a request by "an authority of the United States having criminal law enforcement responsibility" to an "authority of a foreign country."

4. As described in the Declaration of Special Agent Christopher Derks, attached as Exhibit A and incorporated herein, the investigation to date has revealed that ARNOLD ROJAS RIVAS and FRANK ROJAS RIVAS owned a Mexican-based company called Corporative Papelero y de Suministros Basicos ("COPASBA") that produced toilet paper and napkins for the Mexican market. In July 2006, COPASBA entered into a credit agreement with WorldBusiness Capital, Inc. ("WBC"), a commercial finance company, for a loan of \$10 million to construct a new warehouse, purchase new and used equipment, and provide permanent working capital to fund projected sales growth. As part of the loan application process, COPASBA submitted its intended uses for the loan proceeds together with several references.

The WBC loan was guaranteed by the Overseas Private Investment Corporation ("OPIC"). OPIC is an agency of the United States Government that provides insurance, guarantees, financing, and reinsurance for small and medium-sized businesses located in eligible countries.

Pursuant to the loan agreement, WBC made three disbursements to COPASBA, as follows:

Date	Amount	Wire To
June 27, 2006	\$1,964,892.34	COPASBA account *****0853 at Banco Grupo Financiero HSBC in Mexico
September 29, 2006	\$500,000.00	COPASBA account (number unknown) at Intercam Casa de Cambia S.A. de C.V.
June 21, 2007	\$1,656,691.32	COPASBA account *5487 at Banco Nacional de Mexico

In the Credit Agreement, COPASBA pledged to utilize loan proceeds only for the business purposes described in its loan application. However, the investigators have reviewed records for U.S.-based accounts in the name of Arnold Rojas and determined that COPASBA violated this requirement. For example, it appears that within a day of receiving the \$1,656,691.32 and \$500,000 disbursements, the amount of each disbursement was transferred from a COPASBA account to an Arnold Rojas Rivas' account. The funds were subsequently either transferred to other accounts controlled by Arnold or Frank Rojas Rivas or used for the purchase of stock securities. The investigators have been unable to fully track these disbursements and transfers without the Mexican-based bank records. For instance, the June 21, 2007 disbursement was wired from WBC to COPASBA's account at Banco Nacional de Mexico. The next day \$1,565,000 was transferred from a second COPASBA account to a Merrill Lynch account in Arnold Rojas Rivas' name. The investigation has not been able to uncover whether or not there was a transfer from COPASBA's Banco Nacional de Mexico account to the second COPASBA account. This evidence is likely located in the bank records located in Mexico at Banco Nacional de Mexico.

COPASBA was required to make periodic repayments to WBC. COPASBA stopped making payments in or around July 2007. As a result, WBC declared COPASBA to be in default and terminated the loan on or about September 20, 2007. WBC submitted a loss claim to OPIC in or around March 2008 in the amount of \$7,782,200 for the total outstanding principal amount of the loan plus fees and interest. As the loan guarantor, OPIC paid the total claim to WBC.

On or about May 24, 2012, the United States requested by MLAT that the Central Authority of Mexico obtain bank account records from Banco Grupo Financiero HSBC, Banco Nacional de Mexico, S.A., and Intercam Casa De Cambia, S.A. de C.V. (now Intercam Casa de Bolsa, S.A. de

C.V.), for certain Mexican-based accounts in order to document the disposition of funds in question.

Based on the above, it reasonably appears that evidence of the above offenses is located in Mexico.

5. This case was initially referred to the Government in or around the summer 2009, roughly two years after the last WBC disbursement to COPASBA. Since that time, the Government has issued over a dozen subpoenas and analyzed bank records for U.S.-based banks. However, further bank records located in Mexico were needed to complete the investigation.

6. On May 24, 2012, the Office of International Affairs of the United States Department of Justice made an official request pursuant to *the Treaty on Cooperation between the United States of America and the United Mexican States for Mutual Legal Assistance* (hereinafter “MLAT”) in obtaining evidence. A copy of the letter transmitting the request is attached hereto as Exhibit B. The requested records have not yet been produced by the Central Authority of Mexico.

7. Each of the requirements of Section 3292 is satisfied here. A grand jury impaneled in the District of Columbia is investigating the above-referenced subjects’ participation in a loan fraud scheme. The instant application is filed before the return of an indictment and it indicates that evidence of such offense is in Mexico. A preponderance of the evidence demonstrates that official requests have been made for such evidence and it reasonably appears that such evidence is in Mexico.<sup>1</sup>

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<sup>1</sup> In *United States v. Atiyeh*, 402 F.3d 354 (2005 WL 674477)(3d Cir. March 24, 2005), the court of appeals emphasized that the Government’s application to suspend the statute of limitation comes too late after it has received the requested foreign evidence. In other words, the court deciding whether to grant the government’s application must conclude (it “reasonably appears”) that, at the time the Government made the application, the evidence was in the foreign jurisdiction.

WHEREFORE, based on the above, this Court should allow the government's application for a suspension of the statute of limitations as of the date of the official MLAT request to Mexico, May 24, 2012, in accordance with the Section 3292(b).

Respectfully submitted,

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